

## **BILL ANALYSIS**

Senate Research Center

H.B. 2201  
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Natural Resources  
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Enrolled

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The U.S. Department of Energy has outlined an integrated carbon sequestration and hydrogen research (a.k.a. "FutureGen") proposal that provides for \$800 million in federal funding with the remaining \$200 million to be funded by private industry and other nations. Securing the FutureGen project is expected to create over 11,000 new jobs with labor compensation of over \$374.3 million dollars, generate \$98 million in tax revenue and result in over \$1.2 billion in total economic benefit to Texas. Securing the U.S. Department of Energy's FutureGen project in Texas is a top priority.

One of the critical selection criteria the Department of Energy has identified for the FutureGen project is the ability to ensure the predictable and timely permitting and construction of the components that will make up the FutureGen project. In Texas, there is not currently a predictable regulatory process that will enable the State to reliably estimate the time period for securing permits to construct all the components of the FutureGen project. An example of the uncertain regulatory process is the lengthy contested case hearing process for air, water quality, water rights, waste, and mine permits that may be necessary to build all the elements of the FutureGen project.

H.B. 2201 creates a more predictable and streamlined permitting process for the key components of the FutureGen project to better position Texas in the competition for the project. The bill is also designed to create financial incentives to compete with the financial incentive packages being proposed by several other states competing for the FutureGen project.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 382.0565, Health and Safety Code) and SECTION 7 (Section 5.558, Water Code) of this bill.

Rulemaking authority is expressly granted to the Texas Water Development Board in SECTION 8 (Section 16.053, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

**SECTION 1.** Sets forth a list of legislative findings supporting a clean coal project.

**SECTION 2.** Amends Section 2305.037, Government Code, as follows:

**Sec. 2305.037.** New heading: **INNOVATIVE ENERGY DEMONSTRATION PROGRAM.** (a) Provides that the energy office is the supervising state agency of the innovative, rather than renewable, energy demonstration program and requires the energy office to distribute grant money under the program for certain demonstration projects that develop sustainable and innovative energy resources.

(b) Requires the energy office, contingent on the selection of a Texas site for the location of the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project, and to the extent that funds are appropriated for this purpose, to distribute to the managing entity of the FutureGen project an amount equal to 50 percent of the total amount invested in the project by private industry sources. Requires the managing entity of the FutureGen project to provide records as considered necessary by the energy office to justify grants under this subsection. Prohibits cumulative distributions under this subsection from exceeding \$20 million.

(c) Authorizes the energy office to require a grant recipient under the program to match a grant in a ratio determined by the energy office.

**SECTION 3.** Amends Subchapter C, Chapter 382, Health and Safety Code, by adding Section 382.0565, as follows:

**Sec. 382.0565.** **CLEAN COAL PROJECT PERMITTING PROCEDURE.** (a) Authorizes the United States Department of Energy to specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. Provides that if the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than certain amounts.

(b) Requires the Texas Commission on Environmental Quality (TCEQ), by rule, as authorized by federal law, to implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) Requires TCEQ, when acting under a rule adopted under Subsection (b), to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) Provides that the permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5 (Texas Natural Resources Conservation Commission), Water Code, or Subchapters C-G, Chapter 2001 (Administrative Procedure), Government Code.

(e) Provides that this section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

**SECTION 4.** Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.108, as follows:

**Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE.** (a) Defines "clean coal project."

(b) Authorizes a corporation to deduct from its apportioned taxable capital the amortized cost of equipment or from its apportioned taxable earned surplus 10 percent of the amortized cost of equipment under certain conditions.

(c) Sets forth the requirements for the amortization of the cost of capital used in a clean coal project.

(d) Requires a corporation that makes a deduction under this section to file with the comptroller an amortization schedule showing the period for which the deduction is to be made. Requires, on the request of the comptroller, the corporation to file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.

(e) Authorizes a corporation to elect to make the deduction authorized by this section from apportioned taxable capital or appointed taxable earned surplus, but not from both, for each separate regular annual period. Provides that an election for an initial period applies to the second tax period and to the first regular annual period.

**SECTION 5.** Amends Section 313.024(b), Tax Code, to require the corporation or limited liability company, to be eligible for a limitation on appraised value under this subchapter, to use the property in connection with a clean coal project, as defined by Section 5.001, Water Code or a gasification project for a coal and biomass mixture.

**SECTION 6.** Amends Section 5.001, Water Code, by amending Subdivisions (2) and (3) and adding Subdivisions (4), (5), (6), and (7), to redefine "commission" and "executive director" and define "clean coal project," "coal," "component of the FutureGen project," and "FutureGen project profile."

**SECTION 7.** Amends Subchapter M, Chapter 5, Water Code, by adding Section 5.558, as follows:

**Sec. 5.558. CLEAN COAL PROJECT PERMITTING.** (a) Requires TCEQ, by rule, as authorized by federal law, to implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(b) Requires TCEQ, when acting under a rule adopted under Subsection (a), to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(c) Provides that the permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 382 (Clean Air Act), Health and Safety Code, or Subchapters C-G, Chapter 2001 (Administrative Procedure), Government Code.

(d) Provides that this section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

**SECTION 8.** Amends Section 16.053, Water Code, by adding Subsection (r), as follows:

(r) Requires the Texas Water Development Board (board) by rule to provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan, to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001. Authorizes the rules to allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not meet certain criteria.

**SECTION 9.** Amends Subchapter B, Chapter 27, Water Code, by adding Section 27.022, as follows:

**Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION.** Provides that TCEQ has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is

below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 10. Amends the heading to Subchapter C, Chapter 27, Water Code, to read as follows:

#### **SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS**

SECTION 11. Amends Subchapter C, Chapter 27, Water Code, by adding Section 27.038, as follows:

Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION. Provides that the Railroad Commission of Texas (railroad commission) has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a reservoir productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 12. (a) Provides that this section takes effect only if S.B. 831, Acts of the 79th Legislature, Regular Session, 2005, or similar legislation providing for funding for emerging technologies, is enacted and becomes law.

(b) Amends Chapter 490, Government Code, as added by S.B. 831, Acts of the 79th Legislature, Regular Session, 2005, by adding Subsection G, as follows:

#### **SUBCHAPTER G. CLEAN COAL PROJECTS**

Sec. 490.301. DEFINITION. Defines "clean coal project."

Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT. (a) Authorizes the governor, notwithstanding Section 490.102, to allocate money appropriated to the fund by the legislature to provide matching money for a clean coal project as described by Section 2305.037 under certain conditions.

(b) Authorizes the governor to allocate proceeds deposited in the fund as provided by an agreement described by Section 490.103 to provide matching money for a clean coal project as described by Section 2305.037 under certain conditions.

Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY. Provides that a clean coal project, notwithstanding any other provision of this subchapter, constitutes an opportunity for emerging technology suitable for consideration for a grant under Subchapter C,

incentives as provided by Subchapter D, grant matching as provided by Subchapter E, and acquisition of research superiority under Subchapter F.

**SECTION 13. Provides that not later than September 1, 2006:**

(1) the Texas Water Development Board is required to adopt rules under Section 16.053, Water Code, as amended by this Act;

(2) TCEQ is required to adopt rules under Section 382.0565, Health and Safety Code, and under Sections 5.558 and 27.022, Water Code, as added by this Act; and

(3) the Railroad Commission of Texas is required to adopt rules under Section 27.038, Water Code, as added by this Act.

**SECTION 14. Effective date: upon passage or September 1, 2005.**